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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,919	03/18/2004	Evan C. Unger	006086.00020	5427
LISA A. HAILE J.D. P.H.D. DLA PIPER US LLP 4365 EXECUTIVE DRIVE SUITE 1100 SAN DIEGO, CA 92121-2133				
EXAMINER				
AUDET, MAURY A				
ART UNIT		PAPER NUMBER		
1654				
MAIL DATE		DELIVERY MODE		
09/18/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10802919	3/18/04	UNGER ET AL.	006086.00020

EXAMINER

MAURY AUDET

ART UNIT**PAPER**

1654

20090917

DATE MAILED:

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Commissioner for Patents

The application was sent back to this Examiner, after Allowance, because the IDS of 6/28/04, was filed without including any of the 72 pages of references, while this application was under consideration by the time of First Action, by former Examiner Young. Including a number of references without dates cited, that had to be found/corrected.

The 72 pages of references have been considered only in so far as far as that Examiner's and the present Examiner's search can be deemed to have extended to this unduly voluminous amount of information, since Applicant has provided no relevance of any reference in the context of the invention as claimed.

The Information Disclosure Statement filed 6/28/04 (references all present in parent SN 08841169, file ordered & reviewed by this Examiner) was inadvertently not initialed/signed by Former Exam. Young, but has been so by the present Examiner as the references therein were inherently considered prior to the time of Allowance, based on a search of the prior art as to the claimed invention, said search which includes a search of the databases within which each of these references are found/searchable. Namely, in East/West (internal USPTO DB's) a full KWIC search of the full document is possible; whereas in any Non Patent Literature (NPL) reference, in a database such as PUBMED, a KWIC search within the title/abstract is all that is possible.

However, it is noted that the Offices resources and time per application are not unlimited. And that this was a 72-page Information Disclosure Statement, with an estimated 500+ references. Since there was not a single statement of relevance (e.g. w/ sections, pages, columns, etc.) as to any of these references, in many ways the IDS amounts to a 'throw-away' IDS, where it is wholly uncoverable what Applicant believes to be more or less relevant to the amended, claimed invention - especially if what was most relevantly filed by Applicant was buried somewhere inside by example, reference #223, 3rd to the last paragraph, 2nd sentence - which would be wholly unsearchable based on current NPL KWIC search technology capacity.

The Examiner again notes that the search & review of these references, especially based on the sheer volume within this IDS, is limited to essentially a search of the title/abstract in all NPL documents. Should Applicant believe that 1 or more passages within this 500+ references list, may have been overlooked by the former Examiner or the present Examiner, Applicant remains on a duty of disclosure to bring this information before the Office - particularly if buried somewhere within the reference itself and not immediately envisaged within the title/abstract of an NPL document.

The 72 pages of references has been initialed and signed off in the 1449 by this Examiner per the above.

Conclusion

Claims 105-116 remain allowed, notwithstanding the above and absent any evidence/disclosure of some material passage to the contrary, from any of the 500+ references filed in the IDS of 6/28/04.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MAURY AUDET whose telephone number is (571)272-0960. The examiner can normally be reached on M-Th. 7AM-5:30PM (10 Hrs.). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
MA, 9/17/2009

/Maury Audet/
Examiner, Art Unit 1654
Full Sign. Auth. Program